

Notice of Change/Withdrawal

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Notice is hereby given that the following changes have been made to the proposed rule in accordance with subparagraph 120.54(3)(d)1., F.S., published in Vol. 46 No. 34, February 19, 2020, issue of the Florida Administrative Register.

The following changes are made in response to written comments received from members of the public and the Joint Administrative Procedures Committee.

62-331.010 Purpose and Implementation

(1) No change.

(2) The State 404 Program governs all dredging and filling in waters of the United States regulated by the State under Section 373.4146, F.S. section 404(g)-(i) of the Clean Water Act (CWA), 33 U.S.C §§ 1344(g)-(i) (2018), incorporated by reference herein (https://www.flrules.org/Gateway/reference.asp?No=Ref-XXXXX) (“assumed waters” or “state-assumed waters”), and will be implemented in conjunction with the environmental resource permitting (ERP) program established in Part IV of Chapter 373, F.S.

(3) through (13) No change.

(14) The Department strives to operate a wetlands regulatory program that far exceeds the minimum standards set by federal law and is comprised of professional and knowledgeable staff that make science-based decisions regarding the water resources of the state. To continuously exhibit these qualities, the Department will institute continuous improvement and evaluation measures, including but not limited to:

(a) Partnering with a third-party entity to identify the qualities of a state wetlands regulatory program that exhibits a paragon of excellence, and

(b) Conducting an annual staffing analysis of the State 404 Program.

62-331.051 Application for Individual Permit

Materials to include in an application for an individual permit are described below. Applicants are encouraged to have a pre-application meeting or discussion with Agency staff prior to submitting the application.

(1) No change.

(2) All activities which the applicant plans to undertake which are reasonably related to the same project shall be included in the same permit application. Projects that will take longer than the maximum duration allowed under federal law five years to complete shall follow the long-term conceptual planning process in 404 Handbook section 5.3.2. Subsequent state 404 permits to complete the project shall undergo an expedited review process pursuant to subsections 62-331.052(1) and 62-331.060(8), F.A.C., provided there are no material changes in the scope of the project as originally proposed, site and surrounding environmental conditions have not changed, and the applicant does not have a history of noncompliance with the existing permit.

(3) An application for a permit to complete a project that a permittee is unable to complete within the original duration of the permit shall undergo an expedited review process pursuant to subsections 62-331.052(1) and 62-331.060(8), F.A.C., provided there are no material changes in the scope of the project as originally proposed, site and surrounding environmental conditions have not changed, and the applicant does not have a history of noncompliance with the existing permit.

(4)(3) In addition to the information described in subsection (1), above, the applicant will be required to provide additional information as necessary to assist in the evaluation of the application. Such additional information may include environmental data and information on alternate methods and sites as necessary for the preparation of the required environmental documentation. Further, such additional information shall include data and information necessary for purposes of reviewing impacts to state and federal listed species, including compliance with any applicable requirements resulting from consultation with, or technical assistance by, the Florida Fish & Wildlife Conservation Commission, the U.S. Fish & Wildlife Service, and the National Marine Fisheries Service for purposes of the State 404 Program.

62-331.052 Processing of Individual Permit Applications

(1) Within 30 days of receipt of an application for a permit in accordance with Rule 62-331.051, F.A.C., or receipt of any additional information provided by the applicant in response to the Agency's request for additional information, or within 15 days of receipt of an application for a subsequent phase of a project where the first phase was previously permitted in accordance with section 5.3.2 of the 404 Handbook or where a new permit is needed to complete a project that was unable to be completed during the duration of the original permit, the Agency shall review the application for administrative and technical completeness and shall request any additional information required by the Agency to publish public notice pursuant to Rule 62-331.060, F.A.C., and to determine if the proposed activity meets the conditions for issuance in Rules 62-330.301, 62-330.302, and 62-331.053, F.A.C. The applicant may voluntarily submit a written waiver of the above ~~30-day~~ timeclock requirement to allow the Agency additional time to determine if additional information is required; the Agency is not obligated to accept the waiver or to delay sending the request for additional information.

(a) through (c) No change.

(2) through (3) No change.

62-331.053 Additional Conditions for Issuance of Individual Permits

In addition to the conditions in Rules 62-330.301 and 62-330.302, F.A.C., individual permits under this Chapter are subject to the following conditions:

(1) through (2) No change.

(3) No permit shall be issued for the following:

(a) When the project is inconsistent with the requirements of this Chapter and the 404 Handbook, including when the project:

1. though 3. No change.

4. Jeopardizes the continued existence of endangered or threatened species, or results in the likelihood of the

destruction or adverse modification of a habitat which is determined by the Secretary of Interior or Commerce, as appropriate, to be a critical habitat for endangered or threatened species. Compliance with any requirements resulting from consultation with, or technical assistance by, the Florida Fish & Wildlife Conservation Commission, the U.S. Fish & Wildlife Service, and the National Marine Fisheries Service for purposes of the State 404 Program, and review, as it pertains to endangered or threatened species, by the U.S. Environmental Protection Agency as described in subsection 62-331.052(2), F.A.C., shall be determinative for purposes of evaluating violations of this subparagraph. If an exemption has been granted by the Endangered Species Committee, the terms of such exemption shall apply in lieu of this subparagraph;

5. through 6. No change.

(b) through (f) No change.

62-331.054 General Conditions for Individual Permits

(1) Individual permits shall contain the general conditions for individual permits in subsection 62-330.350(1), F.A.C., as applicable, and any specific conditions necessary to assure that the activities will be conducted in compliance with this Chapter, and in a manner which minimizes adverse impacts upon the physical, chemical, and biological integrity of wetlands and other surface waters, such as ~~requirements for~~ mitigation requirements and protection measures for listed species or historical resources. ~~The general conditions in subsection 62-330.350(1), F.A.C., shall be modified to contain applicable references to the rules of this Chapter, where necessary.~~

(2) No change.

62-331.060 Public Notice

(1) through (7) No change.

(8) Notice for subsequent phases of a long-term project permitted in accordance with section 5.3.2 of the 404 Handbook, or for permits to complete a project that was unable to be completed during the duration of the original permit, shall include only those changes not considered during permitting of a previous phase. Where there are no changes to the project, the notice shall provide the public an opportunity to submit comments, materials, or evidence pertaining to identification of material site changes or potential noncompliance.

62-331.080 Modification, Suspension, or Revocation of Permits

Modification of permits shall be conducted in accordance with subsections 62-330.315(1) through (3), F.A.C., and section 6.2 of Volume I, as applicable. Suspension or revocation of permits shall be conducted in accordance with Section 373.429, F.S. In addition, modification, suspension, or revocation of permits is subject to the following:

(1) The following shall be processed as minor modifications. Any activity not covered below shall be processed as a major modification:

(a) through (d) No change.

(e) Extending the term of an individual permit to the amount of time reasonably needed to complete the project, but not to exceed the maximum duration allowed under federal law, so long as the modification does not extend the term of the permit beyond 5 years from its original effective date and so long as the modification does not result in any increase in the amount of material to be dredged or used as fill.

(2) The Agency shall reevaluate the circumstances and conditions of a permit at any time, either on its own motion or at the request of the permittee or a third party and determine whether to initiate action to modify, suspend, or revoke a permit if sufficient cause exists. Sufficient cause exists when any one of the following factors are present ~~Among the factors to be considered are:~~

(a) through (f) No change.

(3) Extensions of permits.

(a) Individual permits shall not be extended beyond the maximum duration allowed under federal law ~~five years from the original effective date.~~

(b) No change.

(4) No change.

62-331.090 Duration of Permits

Unless revoked or otherwise modified, the duration of a permit under this Chapter is:

(1) No change.

(2) The duration of individual permits shall be specified in each permit and shall not exceed the maximum timeframe allowable under federal law and reasonably necessary to complete the project. Individual permits shall expire no later than five years from the date they originally become effective (see section 6.0 of the 404 Handbook).

62-331.110 Emergency Field Authorizations

(1) through (6) No change.

(7) The Agency shall consult with EPA, the Corps, the tribes, FWC, FWS, and NMFS, as applicable, about issuance of an emergency permit as soon as possible after the emergency permit is requested, but no later than the day of issuance of the emergency permit.

62-331.120 Fees

There shall be no additional fee charged for verifications, notices, applications, or permits under this Chapter.

62-331.160 Use of Formal Determinations

A valid formal determination completed in accordance with subsection 62-330.201(2), F.A.C., and Volume Applicant's Handbook I, section 7.2. shall be accepted in an application for a permit.

62-331.200 Policy and Purpose of General Permits

(1) The general permits apply to those activities that do not otherwise qualify for an exemption under subsection 62-331.020(1), F.A.C., and that qualify under the general permit requirements in this section and within the specific general permit for which notice of intent to use a general permit is given in Rules 62-331.201 through 62-331.248, F.A.C.

(2) No change.

(3) If required, notice of intent to use the general permit shall be given pursuant to subsection 62-330.402(1), F.A.C., and section 4.3 of the 404 Handbook, and acted upon in accordance with subsection 62-330.402(4), F.A.C., section 5.0 of the 404 Handbook, and this section. Submittal of a notice of intent to the Agency is required if:

(a) through (f) No change.

(g) The project is adjacent to or may impact Tribal lands or Tribal Trust Resources;

(h) No change.

(i) ~~The project Miccosukee Tribe of Indians of Florida for any activity that~~ is within two miles of the Miccosukee Federal Reservation; Miccosukee Reserve Area; Krome Avenue, Dade Corners, Cherry Ranch, or Sherrod Ranch Reservations; and Coral Way, Lambick, or Sema Trust Properties. Also for any activity within the Miccosukee Tribe's reserved rights areas, including but not limited to: within Big Cypress National Preserve; within Big Cypress National Preserve addition lands; within Everglades National Park; within Rotenberger Wildlife Management Area; or within Water Conservation Area 3-A; or

(j) No change.

(4) through (5) No change.

(6) The Agency shall have discretionary authority to require any person authorized under a general permit to apply for an individual permit where sufficient cause exists. Sufficient cause shall include a likelihood that the project will cause more than minimal adverse environmental effects to concerns for the aquatic environment; including concerns regarding individual, secondary, and cumulative impacts; and the ability to comply compliance with the conditions in Rule 62-331.201, F.A.C., below.

(7) The Agency may administer, upon agreement with the Corps, Corps regional general permits that are still effective upon the date of assumption for projects within assumed waters, where appropriate, until the date that they expire. The Department shall keep a list of any regional general permits administered by the state after the date of assumption at the following website [address].

Rulemaking Authority 373.026(7), 373.043, 373.118(1), 373.4131, 373.414(9), 373.4145, 373.4146(2), 403.805(1), FS. Law Implemented 373.118, 373.4131, 373.414, 373.4144, 373.4145, 373.4146, 373.416, 373.426 FS., History – New _____.

62-331.201 Conditions for General Permits

(1) through (2) No change.

(3) In addition, general permits under this Chapter are subject to the following conditions:

(a) through (g) No change.

(h) Single and Complete Project. The activity must be a single and complete project. The same general permit cannot be used more than once for the same single and complete project unless otherwise stated within the general permit. (See 404 Handbook, section 3.2.1).

(i) through (j) No change.

(k) Listed species. No activity is authorized under any general permit which is likely to directly or indirectly jeopardize the continued existence of an endangered or threatened species or a species proposed for such designation, or which will directly or indirectly destroy or adversely modify the critical habitat of such species. No activity is authorized under any general permit which may affect a listed species or critical habitat, unless the Agency has consulted with, or been provided technical assistance by the Florida Fish & Wildlife Conservation Commission, the U.S. Fish & Wildlife Service, and the National Marine Fisheries Service under their respective authorities and appropriate measures to address the effects of the proposed activity have been implemented or are required as a specific condition to the general permit.

(l) through (o) No change.

(p) Use of Multiple General Permits. The use of more than one general permit under this Chapter for a single and complete project is prohibited, except when specified within a specific general permit, or when the acreage loss of state-assumed waters authorized by the general permits does not exceed the acreage limit of the general permit with the highest specified acreage limit.

(q) through (s) No change.

(t) If during the ground disturbing activities and construction work within the permit area, there are archaeological or cultural materials encountered which were not the subject of a previous cultural resources assessment survey or to which such impacts were not anticipated, including but not limited to pottery, modified shell, flora, fauna, human remains, ceramics, stone tools or metal implements, dugout canoes, evidence of structures or any other physical remains that could be associated with Native American cultures or early colonial or American settlement; the Permittee shall immediately stop all work and ground-disturbing activities within a 100-meter diameter of the discovery and notify the Agency within the same business day. The Agency shall then notify the State Historic Preservation Officer (SHPO) and the appropriate Tribal Historic Preservation Officer(s) (THPO(s)) or tribe when the interested tribe does not have a THPO, to assess the significance of the discovery and devise appropriate actions.

(u) Additional cultural resources assessments may be required of the permit area in the case of unanticipated discoveries or effects to historic properties as referenced in accordance with condition (t), above, and if deemed necessary by the SHPO, or THPO(s), Tribes, or Agency. Based on the circumstances of the discovery, equity to all parties, and considerations of the public interest, the Agency may modify, suspend, or revoke the permit in accordance with Rule 62-331.080, F.A.C. Such activity shall not resume without written authorization from the SHPO and THPO(s), or tribe when the interested tribe does not have a THPO, concerning potential effects to cultural resources or historic properties for finds under their jurisdiction, and from the Agency.

(v) In the event that unmarked human remains are identified, they shall be treated in accordance with Section 872.05, F.S. All work and ground-disturbing activities within a 100-meter diameter of the unmarked human remains shall immediately cease and the Permittee shall immediately notify the medical examiner, Agency, and State Archaeologist within the same business day. The Agency shall then notify the appropriate SHPO and THPO(s) and appropriate tribes and other appropriate consulting parties. Based on the circumstances of the discovery, equity to all parties, and considerations of the public interest, the Agency may modify, suspend, or revoke the permit in accordance with Rule 62-331.080, F.A.C. Such activity shall not resume without written authorization from the medical examiner, State Archaeologist, and from the Agency. Additionally, if the unmarked remains were identified on federal lands, or lands where the Archaeological Resources Protection Act, 16 U.S.C. §§ 470aa – 470mm (2018), incorporated by reference herein (<https://www.flrules.org/Gateway/reference.asp?No=Ref-XXXXX>), or the Native American Graves Protection Repatriation 25 U.S.C. §§ 3001-3013 (2018), incorporated by reference herein

(<https://www.flrules.org/Gateway/reference.asp?No=Ref-XXXXXX>), applies, such activity shall not resume without written authorization from the SHPO, the appropriate THPO(s), and the federal land manager.

(w)(4) Noncompliance. The permittee shall timely notify the Agency of any expected or known actual noncompliance.

(x)(4) Inspection and entry. The permittee shall allow the Agency, upon presentation of proper identification, at reasonable times to:

1. Enter upon the permittee's premises where a regulated activity is located or where records must be kept under the conditions of the permit,
2. Have access to and copy any records that must be kept under the conditions of the permit,
3. Inspect operations regulated or required under the permit, and
4. Sample or monitor, for the purposes of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location.

(y)(4) The permittee shall comply with all conditions of the permit, even if that requires halting or reducing the permitted activity to maintain compliance. Any permit violation constitutes a violation of Part IV of Chapter 373, F.S., and this Chapter, as well as a violation of the CWA.

(z)(4) The permittee shall take all reasonable steps to prevent any unauthorized dredging or filling in violation of this permit.

(aa)(4) Upon Agency request, the permittee shall provide information necessary to determine compliance status, or whether cause exists for permit modification, revocation, or termination.

62-331.210 General Permit for Maintenance and Removal

(1) This general permit authorizes the following activities:

(a) through (e) No change.

(f) Temporary structures, fills, and work, including the use of temporary mats, necessary to conduct the maintenance activity. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and fill, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. After conducting the maintenance activity, temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, ~~as appropriate~~.

(2) No change.

62-331.215 General Permit for Utility Line Activities

(1) This general permit authorizes the following activities:

(a) through (e) No change.

(f) Temporary structures, fills, and work, including the use of temporary mats, necessary to conduct the utility line activity.

1. through 3. No change.

4. The areas affected by temporary fills must be revegetated, ~~as appropriate~~.

(2) through (6) No change.

62-331.216 General Permit for Bank Stabilization

(1) This general permit authorizes the following activities:

(a) through (b) No change.

(c) Temporary structures, fills, and work, including the use of temporary mats, necessary to construct the bank stabilization activity.

1. through 3. No change.

4. The areas affected by temporary fills must be revegetated, ~~as appropriate~~.

(2) No change.

62-331.217 General Permit for Linear Transportation Projects

(1) This general permit authorizes the following activities:

(a) No change.

(b) Temporary structures, fills, and work, including the use of temporary mats, necessary to construct the linear transportation project.

1. through 3. No change.

4. The areas affected by temporary fills must be revegetated ~~using native wetland species in similar composition to those species which were present at the site or in the contiguous wetland, as appropriate.~~

62-331.225 General Permit for Aquatic Habitat Restoration, Enhancement, and Creation Activities

(1) through (2) No change.

(3) Authorized activities are subject to the following conditions:

(a) through (b) No change.

(c) Reporting. For those activities that do not require submittal of a notice of intent, the permittee must submit a report to the Agency at least 30 days prior to commencing activities in state-assumed waters authorized by this general permit. The report shall include:

1. No change.

2. A copy of:

a. No change.

b. The Natural Resources Conservation Service (NRCS) or U.S. Department of Agriculture (USDA) Technical Service Provider documentation for the voluntary stream enhancement or restoration action or wetland restoration, enhancement, or creation action; or

c. The Surface Mining Control and Reclamation Act (SMCRA) permit issued by the Office of Surface Mining Reclamation and Enforcement (OSMRE) or the applicable state agency.

(4) No change.

(5) The permittee must submit a notice of intent to use this general permit to the Agency prior to commencing any activity, except for the following activities:

(a) Activities conducted on non-Federal public lands and private lands, in accordance with the terms and conditions of a binding stream enhancement or restoration agreement or wetland enhancement, restoration, or creation agreement between the landowner and the U.S. Fish and Wildlife Service (FWS), NRCS, the Farm Service Agency (FSA), the National Marine Fisheries Service (NMFS), the National Ocean Service (NOS), the U.S. Forest Service (USFS), or their designated state cooperating agencies; or

(b) Voluntary stream or wetland restoration or enhancement action, or wetland creation action, documented by the NRCS or USDA Technical Service Provider pursuant to NRCS Field Office Technical Guide standards; or

(6) No change.

(7) If a site is to be reverted back to its documented prior condition, when the reversion will be conducted as described in paragraphs (a) through (c), below, the agreement or general permit shall contain language specifically stating the intent to revert at a later date. The reversion activities will require authorization through the use of the general permit in Rule 62-331.226, F.A.C., or a State 404 Program individual permit for activities associated with reversion but outside of the scope of the original permit.

(a) In accordance with the terms and conditions of a binding stream or wetland enhancement or restoration agreement, or a wetland creation agreement, between the landowner and the U.S. Fish and Wildlife Service (FWS), ~~the Natural Resources Conservation Service (NRCS)~~, ~~the Farm Service Agency (FSA)~~, ~~the National Marine Fisheries Service (NMFS)~~, ~~the National Ocean Service (NOS)~~, ~~U.S. Forest Service (USFS)~~, or their designated state cooperating agencies; or

(b) through (c) No change.

62-331.229 General Permit for Maintenance of Existing Flood Control Facilities

(1) through (3) No change.

(4) The activities must meet the following conditions:

(a) All dredged and excavated material must be deposited and retained in an area that has no state-assumed waters unless otherwise specifically approved by the Agency under separate State 404 permit authorization.

- (b) No change.
- (5) through (6) No change.

62-331.230 General Permit for Completed Federal Enforcement Actions

(1) This general permit authorizes any structure, work, or activity remaining in place or undertaken for mitigation, restoration, or environmental benefit in compliance with either:

(a) The terms of a final written Corps non-judicial settlement agreement resolving a violation of Section 404 of the Clean Water Act; or the terms of an EPA 309(a) order on consent resolving a violation of section 404 of the Clean Water Act, provided that:

- 1. No change.
 - 2. The settlement agreement provides for environmental benefits, to an equal or greater degree, than the environmental detriments caused by the unauthorized activity that this general permit is authorizing~~is authorized by this general permit~~; and
 - 3. No change.
- (b) through (c) No change.
 - (2) through (3) No change.

62-331.231 General Permit for Temporary Construction, Access, and Dewatering

- (1) No change.
- (2) The activities authorized by this general permit must meet the following conditions:
 - (a) through (c) No change.
 - (d) The affected areas must be revegetated, ~~as appropriate~~.
- (3) No change.

62-331.240 General Permit for Stormwater Management Facilities

- (1) through (4) No change.
- (5) Projects adjacent to Tribal lands shall not be authorized without prior written approval from the respective Tribal entity.

62-331.242 General Permit for Repair of Uplands Damaged by Discreet Events

- (1) through (3) No change.
- (4) The Agency ~~shall retain the right to~~ determine the extent of the pre-existing conditions using best available evidence, and shall limit the extent of any restoration work authorized by this general permit to pre-existing conditions that were legally in existence prior to the discreet event.
- (5) No change.

62-331.248 General Permit for Florida Department of Transportation and Florida's Turnpike Enterprise

(1) This general permit authorizes activities required for the construction of Florida Department of Transportation (FDOT) and Florida's Turnpike Enterprise (FTE) projects, with a Federal Highway Administration (FHWA) and/or FDOT approved Environmental Document (PD&E, Categorical Exclusion, Environmental Assessment, ~~or Environmental Impact Statement, or State Environmental Impact Report~~), including non-capacity and capacity improvements, where dredge and fill impacts do not result in the loss of greater than 5.0 acres of state-assumed waters (wetlands and surface waters) for any 1-mile segment of roadway length up to a maximum loss of 50 acres of state-assumed waters per project. This includes FTE projects with an approved state Environmental Document. Secondary impacts associated with projects authorized under this general permit shall be assessed, however, secondary impact acreages will not count toward the impact acreage limits (5.0 acres/1-mile and 50 acres total) within this general permit.

- (2) This general permit does not authorize:
 - ~~(a) Construction~~ of a new alignment (non-existing roadway);
 - ~~(b) Activities in Monroe County.~~
- (3) This general permit is subject to the following conditions:

(a) Use of this general permit is limited to linear transportation projects that have been reviewed through the FDOT Efficient Transportation Decision Making (ETDM) and/or Project Development and Environment (PD&E) Study subsequent to 2010. The environmental documents must have been evaluated, re-evaluated, or confirmed to be current within five years of submittal of an application.

(b) The term "capacity" is used to express the maximum number of vehicles or persons that can pass a point on a roadway during a given time period under prevailing roadway and traffic conditions. A capacity improvement project is normally implemented by the addition of through travel lanes. A capacity improvement project can also be a new interchange or new intersection that is contiguous and connects to an existing roadway but would not include a new interchange or intersection that results in a new roadway alignment. Non-capacity improvement projects may include safety improvements, maintenance, bike lane, or sidewalk additions.

(c) through (e) No change.

(f) A copy of all "~~Recommendations and~~ Commitments" related to the avoidance and minimization of impacts to state-assumed waters identified in any completed Environmental Documents and the Quality Enhancement Strategies (QES) (effective date), incorporated by reference herein (<https://www.flrules.org/Gateway/reference.asp?No=Ref-XXXXXX>), shall be submitted with the permit application prior to verification of this general permit.

(g) No change.

(h) Cultural Resources and/or Historic Properties. In addition to the conditions for general permits in Rule 62-331.200, F.A.C., the following shall apply:

1. No structure or work shall adversely affect, impact, or disturb properties listed in the National Register of Historic Places (NRHP), or those eligible for listing in the NRHP where the adverse effect, impact, or disturbance has not been resolved through consultation with the SHPO.

2. The applicant shall determine and document, in consultation with SHPO, the scope of identification efforts for cultural resources within the undertaking's area of potential effect and establish a determination of effects based upon these efforts. Documentation of this scope of identification efforts and determination shall be provided in summary form to the Agency along with the concurrence documents from SHPO.

3. If an archaeological monitor is required, A professional archeologist who meets the "Archeology and Historic Preservation: Secretary of Interior's Standards and Guidelines" shall be onsite during the initial ground-disturbing activities. The professional archeologist shall be responsible for monitoring the spoil and ground disturbance for archaeological deposits. Should potential significant archaeological deposits (which shall include, but not be limited to: pottery, modified shell, flora, fauna, human remains, ceramics, stone tools or metal implements, dugout canoes, evidence of structures or any other physical remains that could be associated with Native American cultures or early colonial or American settlement), recovery be encountered, all work and ground disturbing activities must cease within a 100-meter diameter of the discovery to allow for proper assessment, recording, and recovery of the cultural deposits in a professional manner. The archeologist on site shall notify the Permittee, SHPO, and the Agency the same business day to assess the significance of the discovery and devise appropriate actions, including salvage operations, coordination with the SHPO/THPO, Tribes, and other consulting parties, as appropriate and in compliance with applicable historic preservation laws. Upon completion of the monitoring activities, an archaeological letter must be submitted to the Director of Florida's Division of Historical Resources (who also serves as the SHPO), along with an updated Florida Master Site File form and, as appropriate, a monitoring report.

~~2. If during the ground disturbing activities and construction work within the permit area, there are archaeological or cultural materials encountered which were not the subject of a previous cultural resources assessment survey, including but not limited to pottery, modified shell, flora, fauna, human remains, ceramics, stone tools or metal implements, dugout canoes, evidence of structures or any other physical remains that could be associated with Native American cultures or early colonial or American settlement; the Permittee shall immediately stop all work and ground-disturbing activities within a 100-meter diameter of the discovery and notify the Agency within the same business day. The Agency shall then notify the State Historic Preservation Officer (SHPO) and the appropriate Tribal Historic Preservation Officer(s) (THPO(s)) to assess the significance of the discovery and devise appropriate actions.~~

~~3. Additional cultural resources assessments may be required of the permit area in the case of unanticipated discoveries as referenced in accordance with condition subparagraph 2., above, and if deemed necessary by the~~

~~SHPO or THPO(s). Based on the circumstances of the discovery, equity to all parties, and considerations of the public interest, the Agency may modify, suspend, or revoke the permit in accordance with Rule 62-331.080, F.A.C. Such activity shall not resume without written authorization from the SHPO for finds under their jurisdiction, and from the Agency.~~

~~4. In the unlikely event that unmarked human remains are identified, they will be treated in accordance with Section 872.05, F.S. All work and ground-disturbing activities within a 100-meter diameter of the unmarked human remains shall immediately cease and the Permittee shall immediately notify the medical examiner, Agency, and State Archaeologist within the same business day. The Agency shall then notify the appropriate SHPO and THPO(s). Based on the circumstances of the discovery, equity to all parties, and considerations of the public interest, the Agency may modify, suspend, or revoke the permit in accordance with Rule 62-331.080, F.A.C. Such activity shall not resume without written authorization from the State Archaeologist, and from the Agency. Additionally, if the unmarked remains were identified on federal lands, or lands where the Archaeological Resources Protection Act, 16 U.S.C. §§ 470aa—470mm (2018), incorporated by reference herein (<https://www.flrules.org/Gateway/reference.asp?No=Ref-XXXXX>), or the Native American Graves Protection Repatriation 25 U.S.C. §§ 3001-3013 (2018), incorporated by reference herein (<https://www.flrules.org/Gateway/reference.asp?No=Ref-XXXXX>), applies, such activity shall not resume without written authorization from the SHPO, the appropriate THPO(s), and the federal manager.~~

~~(i) Compensatory Mitigation.~~

~~1. through 4. No change.~~

~~(j) Prior to the verification of projects pursuant to this general permit, the applicant (FDOT, FTEFHWA, or others) shall provide the Agency with a copy of either a concurrence document (May Affect, Not Likely to Adversely Affect determinations) or a finalized biological opinion (for May Affect, Likely to Adversely Affect determinations) written by the U.S. Fish and Wildlife Service (USFWS). These documents demonstrate that project consultation for federally listed species has been completed.~~

~~(k) through (t) No change.~~

~~(u) As-Built Certification. Within 60 days of completion of the work authorized by this permit, the Permittee shall submit to the Agency as-built drawings of the authorized work and a completed Form 62-331.428(1) “As-Built Certification By Professional Engineer”, incorporated by reference herein (<https://www.flrules.org/Gateway/reference.asp?No=Ref-XXXXX>). The as-built drawings shall be signed and sealed by a registered professional engineer and include the following:~~

~~1. A plan view drawing of the location of the authorized work footprint, as shown on the permit drawings, with transparent overlay of the work as constructed in the same scale as the permit drawings on 8½-inch by 11-inch sheets. The plan view drawing should show all “earth disturbance,” including wetland impacts and water management structures.~~

~~2. A list of any deviations between the work authorized by this permit and the work as constructed. In the event that the completed work deviates, in any manner, from the authorized work, describe on the attached “As-Built Certification By Professional Engineer” form the deviations between the work authorized by this permit and the work as constructed. Clearly indicate on the as-built drawings any deviations that have been listed. Please note that the depiction and/or description of any deviations on the drawings and/or “As-Built Certification By Professional Engineer” form does not constitute approval of any deviations by the Agency.~~

~~3. Include the permit number on all sheets submitted.~~

The Department revises the following sections of State 404 Program Applicant’s Handbook, incorporated in subsection 62-331.010(5), F.A.C.:

Section 1.2 – to clarify that the duration of state 404 permits shall be consistent with federal law

Section 2.0 – to amend three definitions, add two definitions, and renumber the remaining definitions

Section 3.2.1 – to amend language regarding the numbering of the general permits, adding language regarding the Department’s administration of existing Corps general permits, and clarifying the use of general permits for a single and complete project

Section 4.1 – to clarify that when an application would be processed by the Corps, the environmental resource

permit application would still be processed by the State.

Section 5.2.2 – to amend the list of determinations the State Historic Preservation Office (SHPO) can make when reviewing state 404 permits and adds a provision that addresses federal applicants that have pre-coordinated with SHPO during a federal review process

Section 5.2.3 – to clarify the procedures for species coordination with the wildlife agencies

Section 5.3.2 – to clarify the long-term planning process

Section 5.3.3 – to clarify that the duration of state 404 permits shall be consistent with federal law

Section 6.0 – to clarify that the duration of state 404 permits shall be consistent with federal law

Section 8.3.2 – to clarify the applicability of the aesthetics review

Section 8.3.5 – added to provide clarification on review of cumulative effects under the State 404 Program

Section 8.3.6 – added to provided clarification on review of secondary effects under the State 404 Program

Section 8.4 – to clarify that the duration of state 404 permits shall be consistent with federal law

Section 8.5.1 – to amend language regarding the use of mitigation bank credits as compensatory mitigation